

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 LEUPOLD & STEVENS, INC., )  
4 Plaintiff, ) No. 3:16-cv-01570-HZ  
5 vs. ) February 11, 2020  
6 LIGHTFORCE USA, INC. d/b/a ) Portland, Oregon  
7 NIGHTFORCE OPTICS and )  
8 NIGHTFORCE USA, )  
9 Defendant. )  
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14 **TELEPHONIC HEARING**

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE MARCO A. HERNANDEZ

17 UNITED STATES DISTRICT COURT JUDGE

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## 1 APPEARANCES

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## 1 P R O C E E D I N G S

2 THE CLERK: Good afternoon. This is the matter of  
3 Leupold versus Nightforce, Case No. 16-cv-1570, Judge  
4 Hernandez presiding. This is the time set for a scheduling  
5 conference.

6 Please note we have a court reporter present, so  
7 please identify yourself each time you speak.

8 Counsel, please tell me who all is on the record,  
9 starting with the plaintiff.

10 MR. PARK: Brian Park for the plaintiff.

11 MR. BRUNETTE: Nathan Brunette for the plaintiff.

12 MR. DAVIS: Scott Davis for defendant.

13 MR. CASIMIR: David Casimir for defendant.

14 THE COURT: Good afternoon. This is Judge Hernandez.

15 So we are gathered here to talk about scheduling.

16 And let's -- first I want to talk about the doctrine of  
17 equivalents first. We just issued an opinion, and I want to  
18 first turn to the plaintiff and say, did our opinion resolve  
19 your doctrine of equivalents issue?

20 MR. PARK: This is Brian Park.

21 Yes, Your Honor, as to at least one of the disputed  
22 claim terms, the "projecting outwardly from" term, your  
23 decision did resolve that.

24 Assuming that the same analysis and rationale applies  
25 to the very similar "spiraling outward from" claim dispute,

1 then I think that your decision from yesterday would resolve  
2 that also.

3 And then I don't know if Nightforce intends to  
4 continue asserting that there is a claim construction needed  
5 for the "Archimedean versus linear" issue. If so, that would  
6 remain, I believe, for the pretrial conference.

7 THE COURT: All right.

8 Mr. Casimir, does that sound right to you?

9 MR. DAVIS: Your Honor, if I might, this is Scott  
10 Davis for defendant.

11 THE COURT: Oh, sure.

12 MR. DAVIS: I think that as to the first term,  
13 "projecting outwardly from the exterior of the housing," it's  
14 the plaintiff who would be asserting the doctrine of  
15 equivalents, and it sounds like they no longer intend to do  
16 that.

17 I would think there is still an issue with doctrine  
18 of equivalents potentially in play on the "spiraling outwardly  
19 from the axis of rotation" term, which hasn't been resolved;  
20 and Nightforce does not believe that the Court's opinion  
21 touched on any issue that is pertinent to that.

22 THE COURT: Okay. Thank you.

23 Let's now talk about scheduling, and we're going to  
24 get back to this in a second.

25 The first deadline that I want to talk to you about

1 is the expert motions deadline, and it looks like the parties  
2 are looking for March the 2nd. That's acceptable to me.

3 And then expert and doctrine of equivalents  
4 responses, March the 16th, that's acceptable to me.

5 And then expert and doctrine of equivalent replies,  
6 you wanted March the 26th. I'm going to give you until March  
7 the 23rd.

8 As regards the waves of pretrial filings, I am not  
9 moving those because I won't have time to get through  
10 everything and be ready to try your case if I move them.

11 Final pretrial conference, May 11th, and start of the  
12 trial May 19th, those dates remain the same.

13 Hang on a second. My court reporter is having  
14 technical difficulties.

15 (There is a brief pause in the proceedings.)

16 THE COURT: All right. We're back.

17 Then returning to the doctrine of equivalents,  
18 because it may still be a live issue as regards the "spiraling  
19 outward" term, I have a note that Nightforce believes that the  
20 doctrine of equivalents is a matter for the Court as a  
21 threshold gatekeeping matter and perhaps kind of in line with  
22 a *Daubert* analysis -- I'm not sure -- but that there's a  
23 gatekeeping function that must occur before any such theory  
24 can be presented to the Court.

25 I haven't found anything that tells me that. So I

1 will leave it to Nightforce to come up with some authority on  
2 that proposition. Today is Tuesday. You have until Friday.  
3 And all I really want is citations of cases, and I can look at  
4 and read the cases for myself.

5 And, Leupold, if you want to try to find cases that  
6 suggest to the contrary, you're welcome to do so. You also  
7 have until Friday to get those citations to me.

8 Then let's get back to the plaintiffs.

9 From Leupold's perspective, is there anything else we  
10 need to talk about?

11 MR. PARK: No, Your Honor, I don't think so.

12 This is Brian Park.

13 THE COURT: Thank you, Mr. Park. I now and I think  
14 my court reporter now recognizes your voice.

15 How about from the defense perspective?

16 MR. DAVIS: Not necessarily, Your Honor, just by way  
17 of housekeeping -- this is Scott Davis, by the way -- and  
18 keeping track of issues that the parties are -- we do await a  
19 ruling on the Section 1498 government sales issue, I believe.

20 THE COURT: Yes. We'll get it.

21 MR. DAVIS: And, Your Honor, one more point of  
22 housekeeping.

23 How would the Court prefer to receive the authority  
24 on the doctrine of equivalents issue? Is that a filing or an  
25 e-mail to the courtroom deputy?

1                   THE COURT: You can send it as an e-mail. That's  
2 fine. It makes it easier that way. You can each send me just  
3 an e-mail. I'm just going to look at the cases and make my  
4 own decision after I have a chance to take a look at them.

5                   MR. DAVIS: Thank you, Your Honor.

6                   THE COURT: Anything else from defense?

7                   MR. DAVIS: No, not at this time, Your Honor.

8                   THE COURT: All right. Thank you very much. Have a  
9 good afternoon.

10                  MR. PARK: Thank you.

11                  MR. DAVIS: Thank you.

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14                  (Proceedings concluded.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

2-20-20

NANCY M. WALKER, CSR, RMR, CRR  
Official Court Reporter  
Oregon CSR No. 90-0091

DATE

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